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LETTER DATED 11 MARCH 1998 FROM THE LEGAL COUNSEL, UNDER-SECRETARY-GENERAL OF THE UNITED NATIONS FOR LEGAL AFFAIRS, ADDRESSED TO THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

Legal opinion on the applicability of the Convention on the Privileges and Immunities of the United Nations to the members of the Commission

1. At its second session (2-12 September 1997), the Commission on the Limits of the Continental Shelf requested the Legal Counsel to provide it with a formal legal opinion as to the applicability of the Convention on the Privileges and Immunities of the United Nations to the members of the Commission (CLCS/4, para. 20).

2. The question is, whether the Commission can be considered to be an 'organ' of the United Nations to which the provisions of the Convention on the Privileges and Immunities of the United Nations (the 'General Convention')[1] applies, so that the members of the Commission might be considered 'experts on mission for the United Nations' within the meaning of article VI of the General Convention. Evidently, the Commission is neither a principal nor a subsidiary organ of the United Nations, but might be considered as a 'treaty organ' of the Organization. Indeed, there is a group of organs which, though their establishment is provided for in a treaty, are so closely linked with the United Nations that they are considered organs of the Organization.

3. In this connection, we should recall an opinion of 15 September 1969 on the privileges and immunities of the members of the Committee on the Elimination of Racial Discrimination[2] in which the Office of the Legal Counsel held that that

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[1] United Nations, Treaty Series, vol. I, No. 4, p. 15.

[2] United Nations Juridical Yearbook, 1969, pp. 207-210.

Committee was indeed, for the purposes of article VI of the General Convention, an organ of the United Nations. It reached these conclusions taking into account in particular the following points, most of which are also applicable to the Commission on the Limits of the Continental Shelf:

(a) In the 1969 opinion, emphasis was placed upon the fact that the very existence of the Committee on the Elimination of Racial Discrimination was closely related to the resolution adopted by the General Assembly.[3] As far as the Commission is concerned, it should be noted that it was also by a resolution of the General Assembly that the Assembly requested the Secretary-General to provide "from within existing resources, such services as may be required ... for the Commission on the limits of the Continental Shelf".[4] Thus, the Commission was put into an analogous position to the Committee, since article 10, paragraph 3 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the secretariat of the Committee is to be provided by the Secretary-General, and no provision is made for the expenses of this servicing to be met by the States parties to that Convention;

(b) The purpose of the United Nations Convention on the Law of the Sea (UNCLOS) and of the Commission on the Limits of the Continental Shelf is, similarly to that of the International Convention on the Elimination of All Forms of Racial Discrimination and the Committee on the Elimination of Racial Discrimination,[5] to advance certain principles of the Charter of the United Nations. For the former, these include the "adjustment or settlement of international disputes or situations which might lead to a breach of the peace", as provided by Article 1, paragraph 1 of the Charter of the United Nations and for the Organization to be a "centre for harmonizing the actions of nations in the attainment of these common ends" as provided for in Article 1, paragraph 4;

(c) Article 2, paragraph 5, of UNCLOS Annex II states that the secretariat of the Commission is to be provided by the Secretary-General of the United Nations and article 2, paragraph 3, provides that meetings are to be convened by the Secretary-General and held at United Nations Headquarters. Similar provisions exist for the Committee on the Elimination of Racial Discrimination;[6]

(d) Article 2 of UNCLOS Annex II states the mode of election of the members of the Commission, which is similar to that provided for the Committee: that States parties elect members from among their nationals;[7]

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[3] Ibid., p. 208, para. 4. In this case, the establishing resolution was General Assembly resolution 2106 (XX) of 21 December 1965.

[4] General Assembly resolution 49/28, of 6 December 1994, para. 10.

[5] See United Nations Juridical Yearbook, 1969, p. 208, para. 6.

[6] Ibid., p. 208, para. 7.

[7] Ibid., p. 209, para. 8.

(e) Similarly to members of the Committee,[8] article 2, paragraph 1 of UNCLOS Annex II states that the members of the Commission on the Limits of the Continental Shelf serve in their personal capacities.

4. In our presentation to the International Court of Justice in the Mazilu case, we indicated that the United Nations had in the past considered numerous treaty bodies, such as the International Narcotics Control Board, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Committee on the Elimination of All Forms of Discrimination against Women, as covered by article VI, section 22, of the General Convention.[9]

5. Consequently, it would appear that, by established precedent in respect of similar treaty organs, the members of the Commission on the Limits of the Continental Shelf can be considered to be experts on mission covered by article VI of the General Convention.

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[8] Ibid., p. 210, para. 10.

[9] I.C.J. Pleadings, Applicability of Article VI, Section 22, of the convention on the Privileges and Immunities of the United Nations, Written Statement submitted on behalf of the Secretary-General of the United Nations, annex I, part A, pp. 195-196.